

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEVIN HARLEY ERWIN,

Petitioner,

v.

JACK WARNER,

Respondent.

CASE NO. 3:24-cv-05880-TL-GJL

ORDER DENYING STAY

This federal habeas action has been referred to United States Magistrate Judge Grady J. Leupold. Currently before the Court is Petitioner Kevin Harley Erwin’s Motion to Stay and Abey. Dkt. 7. Petitioner requests this action be stayed but does not support his request with a showing of good cause. As such, his Motion to Stay and Abey is **DENIED**.

District courts may use a “stay-and-abeyance” procedure while a petitioner exhausts his claims in state court. *Rhines v. Weber*, 544 U.S. 269, 275–77 (2005); *Calderon v. United States District Court (Taylor)*, 134 F.3d 981, 988 (9th Cir. 1998). Use of this procedure is inappropriate where a petitioner has not demonstrated good cause for “failure to exhaust all claims first in state court” or where the petitioner’s unexhausted claims are “plainly meritless.” *Rhines*, 544 U.S. at

277 (noting that a district court abuses its discretion when it stays federal habeas proceedings to permit exhaustion of clearly meritless claims).

Here, Petitioner represents that he has exhausted all claims currently pled in his Petition and is in the process of exhausting state court remedies for an additional Fourth Amendment claim. *Id.* Petitioner requests a stay so that he may fully exhaust his state court remedies for this additional claim. *Id.* However, Petitioner has not demonstrated good cause for failure to exhaust his Fourth Amendment claim in state court before filing this federal habeas action. Significantly, Petitioner challenges a conviction and sentence imposed over 15 years ago in *State of Washington v. Kevin Harley Erwin*, Superior Court of Washington for Pierce County Case No. 07-1-06044-0 (judgment and sentence entered Jul. 3, 2008). *See* Dkt. 6 at 1. Based solely on the age of his underlying conviction, it appears Petitioner had ample opportunity to exhaust his claims prior to initiating this action. Petitioner submits no evidence, argument, or allegation to show why that is not the case. Absent such a showing, it is inappropriate to stay his federal habeas proceedings.

Accordingly, Petitioner's Motion to Stay and Abey (Dkt. 7) is **DENIED**. Pursuant to the Court's Order for Service, Response, and Answer (Dkt. 8), the deadline for Respondent to file and serve an answer to the Petition is **January 13, 2025**.

Dated this 27th day of November, 2024.

A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid black horizontal line.

Grady J. Leupold
United States Magistrate Judge